IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, CIVIL JURISDICTION

WRIT PETITION NO.6218 OF 2005

Kailash B. Purohit & Ors.....PETITIONERS

Versus

Bank of India.....RESPONDENTS

Mr.Mukul Tally i/b. M/s.S. Mohomedbhai & Co., for the Petitioners
Mr. O.A. Das for the respondent.

CORAM: F.I. REBELLO &
DR. D.Y. CHANDRACHUD,JJ.
DATE : 28th September, 2005

P.C.:

. In proceedings filed before Debt Recovery Tribunal there is an order against the petitioners directing the petitioners to pay the amount as set out therein. There is no dispute that the bills were drawn. The only defence is whether the goods were defective. In the Appeal preferred there is an application for waiver of deposit. the learned Chairperson after considering prima facie controversy has been pleased to direct the petitioners herein to deposit 30% of Rs.96,80,978.98 within eight weeks from the date of the order. That order was passed on 5th August, 2005. The matter was kept for compliance on 30th September, 2005. It is this order which is the subject matter of the present petition.

2. We have heard learned Counsel. The issue before the learned Appellate Authority was in the matter of waiver. Once there be a judgement against the petitioners and considering

the prima facie consideration by the Appellate forum which has reduced the deposit from 75% to 30% considering the facts and circumstances this will not be a fit case where this Court should exercise its extra ordinary jurisdiction. In so far as the bank is concerned, the proceedings were initiated on the basis that they were the payees and holders in due course of the said Bills of Exchange and were entitled to receive the amount mentioned in the said Bills. Whether goods were defective is an issue that can be gone into by the Appellate Court. Considering the above we do not think this is a fit case to exercise our extra ordinary jurisdiction. Petition rejected.

3. Considering that the time for deposit has expired the time to deposit extended by a further period of four weeks from today. If the amount is deposited the order dismissing the Appeal for non-deposit will be set aside and heard on merits.

(F.I.REBELLO, J.)

(DR. D.Y. CHANDRACHUD, J.)